THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1396 OF 2007

DATED 25th JANUARY, 2007

Between

Karra Kameswaramma

... Petitioner

AND

The Joint Collector & Settlement Officer, Vizianagaram, And others.

.... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1396 OF 2007

ORDER:

This writ petition is filed seeking a writ of Prohibition. The petitioner prays for declaration that the first respondent, namely, the Joint Collector & Settlement Officer has no jurisdiction to entertain the application under A.P. (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (the Act, for brevity) for granting ryotwari patta under Section 11 of the Act or to conduct enquiry under Section 15(1) of the Act and consequently declare the impugned notice, dated 26.08.2006 as illegal and without jurisdiction.

The petitioner made the following allegations in the affidavit accompanying the writ petition. The petitioner and others were granted ryotwari patta by the settlement officer. Ryotwari patta in respect of lands in survey Nos.88/16, 88/2 and 89/7 admeasuring Acs.2.62 situated at Katakapalli village, Kothavalasa Mandal, Vizianagaram District. They claimed to be in possession of the land, by reason of which, they are entitled for ryotwari patta under Section 11 of the Act. Respondents also alleged that petitioner herein received compensation under the Act and that no enquiry was held under Section 15(1) of the Act. The petitioner denies the right of the respondents 3 to 5. When they tried to interfere, she filed O.S.No.5 of 1991 on

the file of the Court of the District Munsif for permanent injunction, the same subsequently marked as O.S.No.65 of 1996 was dismissed. Nonetheless, the petitioner again filed O.S.No.33 of 1997 on the file of the Court of the Senior Civil Judge, Vizianagaram for declaration of title and possession. The said Court decreed the suit recording findings that the respondents failed to establish possession and that the evidence adduced by the respondents is unreliable. The respondents filed application for ryotwari patta just prior to disposal of the above suit and that they also admitted in the suit that ryotwari patta is already granted. Therefore, another application for enquiry under Section 15(1) or for ryotwari patta under Section 11 of the Act is not maintainable.

Learned counsel for the petitioner submits that the admissions made by the respondents 3 to 5 in O.S.No.33 of 1997 and the ryotwari patta issued to the petitioner by the Settlement Officer bars the jurisdiction of the Settlement Officer (first respondent) to entertain another application filed by the respondents 3 to 5 under Section 11 or 15(1) of the Act. He submits that none of the circumstances claimed in their favour were proved before the civil Court by the respondents, and therefore, another enquiry by the first respondent is not warranted. He would urge that by reason of the patta granted to the petitioner, the first respondent suffers from inherent lack of jurisdiction.

A person seeking a writ of prohibition has to plead and demonstrate that the public authority, a Tribunal or a Court suffers from inherent lack of jurisdiction and that any decision by such authority would be void for want of such jurisdiction. If a question of *res judicata,* a question of appreciation of evidence or a question of estoppel by record is the issues which are possible defences for the party claiming a writ, in such a case, a writ of prohibition cannot be issued. The apprehension that with reference to these issues there might be an error in the exercise of jurisdiction of the public authority is no ground for issue of writ of prohibition. Without anything else, the Court should come to the conclusion that the public authority dealing with the matter has no jurisdiction under the statute in respect of which power is being exercised. Further, it is well settled that a writ of prohibition like other extraordinary remedies is also subject to limitations

like alternative remedy, delay and laches and other Rules of prudence governing the exercise of power of judicial review. It is well settled that a writ of Prohibition is granted only in cases where usual and ordinary forms of remedy are insufficient to afford redress.

There is no denial before this Court that the first respondent is Settlement Officer. There is also no denial that the application made by the respondents 3 to 5 is under Section 15(1) of the Act requesting to conduct enquiry and issue of ryotwari patta under Section 11(a) of the Act. As seen from the Judgment of the civil Court in O.S.No.33 of 1997, respondents 3 to 5 pleaded that the petitioner herein and others (plaintiffs in the above suit) "manage to obtain ryotwari patta taking advantage of their relatives in Revenue Department". This is certainly a matter for enquiry under Section 15(1) of the Act, which is to the effect that it is well within the powers of the Settlement Officer to examine the nature and history of the lands, in respect of which landholder claims a ryotwari patta. Secondly, against any order that may be passed under Section 15(1) of the Act, the aggrieved person can prefer a Revision under Section 15(2)(a) or prefer an Appeal under Section 15(2)(b) of the Act. The notice, dated 26.08.2006, was issued and the petitioner approached this Court after lapse of about five months seeking a writ of Prohibition. The writ petition is therefore misconceived and is accordingly dismissed.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

25.01.2007.
pln